

## **REMARKS**

Claims 1-5, 8-14, 27-30, 32, and 37-39 are rejected in an Office Action dated April 28, 2009. Claims 1, 8, 27, and 32 have been amended to clarify that the venting media is formed of a polymer film. No new matter has been added. Claims 40-42 have been added to further clarify the present invention. Support for this amendment to the claims is found throughout the specification and particularly at page 12, lines 9-15. As discussed with the Examiner on January 13, 2009 in a telephone interview, the amendments are believed to clarify the present invention.

### **Claim Rejections - 35 USC 102(b)**

Claims 1, 2, 4-5, 8-9, 11-12, 27-29, 32, and 37-39 are rejected under 35 USC 102(b) as being anticipated by Bender (US 3,474,543).

Section 2131 of the Manual of Patent Examiner's Procedure provides: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053, (Fed. Cir. 1987). . . The identical invention must be shown in as complete detail as contained in the . . . claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as in the claim under review. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)."

To anticipate a claim, a single source or reference relied on as an anticipatory reference must contain all of the elements of the claim. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986), cert. denied, 480 U.S. 947 (1987); *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984). Moreover, the single source must disclose all elements recited in the allegedly anticipated claim "arranged as in the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989); *Connell v. Sears Roebuck & Co.*, 722 F.2d 1542, 1458, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983)

Claims 1, 8, 27, and 32 have been amended to clarify that the venting media of the present invention is formed of a polymer film.

Bender does not teach that the venting media is formed of a polymer film.

Accordingly, for the foregoing reasons, the Examiner is requested to withdraw the 35 USC 102(b) rejection of independent and dependent Claims 1, 2, 4-5, 8-9, 11-12, 27-29, 32, and 37-39.

**Claim Rejections - 35 USC 103(a)**

Claims 3, 10, and 30 are rejected under 35 USC 103(a) as being unpatentable over Bender (US 3,474,543).

Claims 13-14 are rejected under 35 USC 103(a) as being unpatentable over Bender (US 3,474,543) in view of Jones (US 5,522,155).

The Applicant respectfully traverses these rejections.

In rejecting claims under 35 USC 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See *In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In establishing this basis, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). Further, “the Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a prima facie case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). And “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007); *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

With regard to Claims 3, 10, and 30, and as acknowledged by the Examiner in the Office Action mailed June 11, 2008, the venting media of Bender (top portion of cap 33) has a top panel of the cap 33 provided with a central opening which communicated through the passage 34 with the vacuum valve. Bender does not teach a venting media *formed of a polymer film and oriented at the top of the cap and external* to said container opening forming a barrier isolating the container from the external atmosphere.

With regard to Claims 13-14 Jones (US 5,522,155) does not provide any teaching to remedy the shortcoming of Bender.

Accordingly, for the foregoing reasons, the Examiner is requested to withdraw the rejection under 35 USC 103(a) as being unpatentable over Bender (US 3,474,543), and further, the rejection of claims 13-14 under 35 USC 103(a) as being unpatentable over Bender (US 3,474,543) in view of Jones (US 5,522,155).

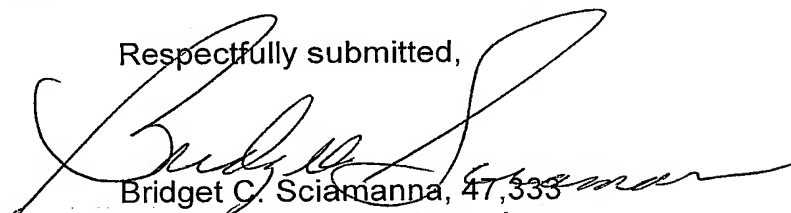
**Conclusion**

Applicants believe that the amendment and remarks further clarify the present invention. Applicants respectfully submit that all of the stated objections and grounds for rejection have been overcome or rendered moot. Accordingly, Applicants respectfully submit that all pending claims are allowable and that the application is in condition for allowance.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative at the number below to expedite prosecution.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,



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